

Board of Adjustment Public Hearing



A New Castle City Board of Adjustment Hearing took place on December 6, 2005 at 9:30 p.m. in the City of New Castle's Town Hall.

Present: Mayor John F. Klingmeyer
David Athey, City Engineer
Gerard Kavanaugh, City Solicitor
Lynn Sheridan, Appellant

Mayor Klingmeyer called the meeting to order at 9:30 p.m. by Mayor Klingmeyer. Roll call was taken. Mayor Klingmeyer read the Notice of Public Hearing that states, "An application has been filed by Lynn Sheridan along with 26 other appellants from the decision of the administrative official issuing an historic review certificate pursuant to the decision of the Historic Area Commission approving the addition to 137 East 2nd Street, New Castle, Delaware. The above appellants feel the approval of the decision was invalid due to a member of Historic Area Commission not being reappointed so therefore their vote does not count. The appellants also contend that the Historic Area Commission did not follow guidelines by not allowing consideration to neighbors who needed to be heard and that the Commission did not provide plans before meeting for review or after for approval.

For the purpose of considering this application, the Board of Adjustment will hold a public hearing on Tuesday, December 6th, 2005, at 8:30 p.m. in Old Town Hall, 2nd Floor, located at 2nd and Delaware Street, New Castle, Delaware."

Ms. Sheridan came forward and spoke on behalf of the appellants. Ms. Sheridan resides at 143 2nd Street, the property in question is adjacent. (Copies of her presentation were given to Board members and she read it aloud.) Board members asked a number of questions about dimensions of the proposed addition to 137 East 2nd Street. Ms. Sheridan also provided a list of some of the New Castle area guidelines; on page 2, the size and mass of this building on this lot is totally not like anything in the area.

Mr. Kavanaugh asked Mr. Bergstrom if he had the Historic Review Certificate that would have been received as part of the building permit. He said he did not have it with him, but the vote was 3-2. He was asked how members of the Historic Area Commission (HAC) voted. He informed Bill Hentkowski and Charles Cobb voted against while the other three members (including the architect) voted for the project. Ms. Sheridan then presented Mark Rosenbloom, a restoration architect based in Philadelphia who is very familiar with New Castle. He agreed to speak to Ms. Sheridan about the Secretary of Interior standards which guide areas such as this. Mr. Kavanaugh pointed out that in Delaware there is no right to light and air.

Mr. Rosenbloom said that this plan is totally inconsistent with the Secretary of Interior guidelines. Mr. Kavanaugh said that HAC and the City of New Castle has a book of guidelines that cost \$13,000. Mr. Rosenbloom informed he has reviewed that book and it clearly states in terms of scale of buildings and the nature of green space and it is very telling. The streetscape has been altered and the open space has been closed. (Mr. Rosenbloom continued with his presentation.) He believes in the fragile nature of this community as well as the unique character of this community and it is being severely compromised. This is not in terms of good historic preservation practice. He asked that issues be reviewed before action is taken.

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Dorothy Fisk, 26 East 3rd Street, asked who the owner of record of this house is; has it been transferred to the developer? (The Board did not know.) She feels that if someone does not actually own a property and there is no owner of record she doesn't understand how HAC can give permission. Mr. Kavanaugh advised an equitable owner has standing. If there is a contract of sale, this gives the person who applies a sufficient ownership interest to allow their application to be considered. The legal title owner doesn't necessarily have to participate as long as there is a contract of sale.

David Bird, 158 East 4th Street, feels what we are talking about is process.

Ms. Sheridan pointed out the guidelines that were not followed, the voting that raises a question of validity. We have to ensure the HAC maintains its integrity and follows its process. It has been stated very well and he asked the Board of Adjustment to consider the impact it will have on the neighborhood.

Tom Whitehead, 131 East 2nd Street, pointed out this house is on the 1868 atlas and it is one of the six oldest structures in the City.

Atta DiMaio, 313 Harmony Street, questioned demolition of the rear of the house without a permit. Mr. Bergstrom confirmed that Tim Skully did apply for a permit. HAC gave him permission to demolish the rear of this building. (Timeline of permit demolition was discussed.)

Mr. Kavanaugh (to Mr. Skully) said someone applied to HAC for permission pursuant to the code to tear down the rear of this property. Mr. Skully said there was asbestos on the property and an asbestos contractor was brought in to remove it.

Ms. Sheridan said she did not see anything noted in HAC minutes that there was a Historical Certificate issued or approval for a demolition. When she read the code the code says in order to get a demolition permit you have to have a HAC certificate. In minutes from March 2004 to present she did not find anything.

Mr. Kavanaugh asked Mr. Skully if he applied to HAC on behalf of someone for the permit. He was representing Dr. Dressler at the time.

Linda C. Brown, identified as the equitable owner of the property, came forward and presented drawings and photographs of the property in question to the Board.

They are being presented to provide the exact nature of what she intends to do and what is there. She informed the audience they would have an opportunity to view the photographs as well.

Mr. Kavanaugh asked if Dr. Dressler is the legal owner of the property. She said he is the legal owner and she is the equitable owner with an agreement of sale.

Ms. Brown disputed Ms. Sheridan's claim that she did not have an opportunity to review the plan. Ms. Sheridan said she went to the Building Department prior to the HAC meeting, but they were not available for her to see. That was a Freedom of Information Act violation, but she did not file a FOIA violation. Mr. Bergstrom did give them to me.

Ms. Brown presented a drawing that she presented at the 10/20/05 HAC meeting that shows three sides that were approved by HAC on Dr. Dressler's application prior to her signing an agreement with Dr. Dressler. She did a lines and grades that she presented to Mr. Bergstrom and HAC to make sure she conformed. It was signed by

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an engineer. Mr. Kavanaugh felt this is not in dispute. He said an appeal has been filed to this Board from the decision of the HAC and through it the Building Inspector who would otherwise issue your building permit, but he can't do that because the zoning code says there has been an appeal and everything has been stayed pending this Board's ruling or the end of litigation. The arguments being made by the appellants are multiple; one is that HAC abused its discretion in approving a project of this size, Ms. Sheridan's dissatisfaction to being able to speak to HAC at its meeting on 10/20/05, and who voted for what. (Mr. Kavanaugh did find a copy of the voting record attached to the appeal.) Mr. Heckrod (architect), Ms. Monigle and Ms. Miller voted 'yes' while Mr. Hentkowski and Mr. Cobb voted 'no'. HAC spent one hour discussing this project. (Discussion about the plans, including roof lines, submitted to HAC and their history took place.) Mr. Skully said Dr. Dressler wanted to raise the roof and he kept returning to HAC with plans to raise the roof and they would not approve it; Ms. Brown presented her "smaller" plan without the raised roof and it was approved with conditions on 3/15/05. (The portion of minutes of the 3/15 HAC meeting concerning this project were read aloud.)

(Additional discussion and confusion expressed concerning various HAC meetings and what occurred at those meetings took place.)

Sally Monigle, HAC Chairman, feels what happened from March 2004 forward was that we went back and forth with Dr. Dressler over this project and we could not come to agreement. Mr. Kavanaugh said HAC approved three sides in March 2005.

Ms. Monigle said she felt this was a contentious process. We had 13 sessions. Those meetings were regular HAC meetings, except for one special meeting and notices were given for those meetings noting this property would be considered.

Mr. Kavanaugh asked if Dr. Dressler withdrew his plans.

Dr. Dressler said he did withdraw his plans. There was a set of plans presented by his architect (Mr. DuPont) that were approved without him being present. He did not agree with those plans and decided to sell the property at that time.

Mr. Athey said it is factual that the last action taken by HAC regarding your (Dr. Dressler) application was a rejection. Dr. Dressler confirmed this statement.

Mr. Kavanaugh said the HAC considered and approved this size structure ultimately after 13 meetings discussing the size and other matters related to what was being proposed. Ms. Monigle said the minutes of the meeting with Ms. Brown clearly states our efforts to get the middle of the house collapsed and lowered; we gave up with

Dr. Dressler. The back of the house had been removed by him and open to the weather, but Ms. Brown said 'no', she wanted to build it differently and the vote was 3-2.

Tom Whitehead (to Dr. Dressler) said Dr. Dressler withdrew his plans, then they came back and it was a 3-2 vote. If they thought the plans were approved they would never have voted the second time. Why approve it twice?

Dr. Dressler clarified the plans that were approved were presented by his architect and he had not seen them. He came back with a different set of plans with an elevation of 32' and HAC rejected those. When Ms. Brown took the plans to HAC it was down to 28' and basically the same floor plan Mr. DuPont had approved.

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David Bird suggested focusing on the issues on appeal. The nature of the appeal is an abuse of discretion by HAC by approving this structure which is 60% coverage of the property when everything else is 33% around it. Another issue is the validity of the vote and term expirations. Third, did Ms. Sheridan have adequate time to review the plans prior to the meeting where they voted and given an opportunity to comment before a vote was taken; her position was that she didn't. Mr. Kavanaugh asked Ms. Sheridan how many of the 13 meetings she attended. She responded she did not attend any of them due to personal issues to attend to at home.

(Concern from the audience was expressed that HAC is not following their guidelines.)

Dick Evans, 419 South Street, attended the 10/20/05 meeting. He felt HAC was in a difficult position because the developer did bring up several bad things that would happen if they didn't approve it; however, it could be argued that the lack of allowing Ms. Sheridan the right to testify left only one viewpoint on the floor at the time of the vote. It might not have changed the outcome of the vote, but she was denied due process. Ms. Monigle agreed she was denied due process and it was her responsibility because she had talked to her beforehand. Mr. Kavanaugh asked if Ms. Sheridan ever spoke to the HAC about this project before 10/20/05. Ms. Monigle said there were comments made. She added there was a change in

membership in HAC that occurred so where there had been a unanimous vote on a previous plan, the final vote one of our members changed their vote and a new member had never voted before.

Mr. Kavanaugh addressed HAC term limits (voter validity). Mr. Hentkowski said his term had expired and he was a carryover and he voted against it. Ms. Miller voted for it and her term had expired, but she has since been reappointed. Mr. Kavanaugh said under Delaware law they serve until their successor has been appointed. Neither Mr. Hentkowski nor Ms. Miller did anything wrong.

Mr. Kavanaugh expressed concern that there were 13 meetings concerning this project at HAC and Ms. Sheridan went to the last one. She informed she didn't become the homeowner until May. Before that she was required not to get involved; she had other issues to attend to at home. There was a large group other than her who opposed this project. Mr. Kavanaugh asked if HAC was aware of the opposition to this project. Mr. Whitehead said he has the petition they were prepared to present at the July 2004 HAC meeting. We had to ask when we could be heard.

Joe DiAngelo said 11-12 people waited for the discussion to come up and questioned why HAC wasn't following the agenda. They were then informed it had been tabled. Mr. Kavanaugh asked whether HAC ever received the petition. He responded 'yes'. Mr. Whitehead said he delivered five copies of the petition with 26 signatures before the HAC meeting to Debbie Pullam's office. Mr. Kavanaugh said the HAC was aware for months that there was active opposition to this project. She was aware there were concerns.

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Mr. Kavanaugh asked how early on HAC learned about active opposition to this project. It appears that by July 2004 the HAC was considering something similar to this and spent 12 more meetings over the next two years talking about it and finally voting 3-2 to approve it.

(Additional concern was expressed from the audience about guidelines not being followed and the citizens not being heard.)

Mr. Kavanaugh said that historically going back to 1987 the Board of Adjustment has been very reluctant to substitute its judgment for the HAC on matters such as size, setbacks, etc. The prerogatives the HAC are set forth in the zoning code and that is why our scope of review is basically limited to determining under the facts of this case whether there was abuse of discretion. The fact you did not get to be heard until after the vote, he didn't know if that deprives you of due process. The HAC was well aware of the opposition to this project and discussed it at 13 different meetings.

Melissa Pavonne, 158 East 2nd Street, asked what appeal process can citizens have? Mr. Kavanaugh said the process is working; 26-27 people appealed from the decision of the HAC as it would be ratified by the Building Administration. If a citizen of the town considers themselves aggrieved by something the Board of

Commission does, the code provides you appeal to the Delaware Superior Court and the judge would determine if we had abused our discretion.

David Bird said he gets the sense the Board is leaning towards denying the appeal. One of the things you might want to consider is the duress that HAC was under when they made the decision; send it back to HAC and have them look at it again. Mr. Athey asked Mr. Kavanaugh if there is a procedural issue here or not. He responded 'no.' Process was served.

Mr. Athey asked if we have the ability to send it back to HAC. Mr. Kavanaugh explained that under the terms of the zoning code, this Board has appellant authority. We can reverse, affirm (wholly or partially), or modify. As far as the evidence has shown this matter came properly before the HAC on 13 different occasions over a period of two years. Members of HAC were aware of active opposition to this project and voted 3-2 to approve it. Evidence shows on two earlier occasions they approved a 28' elevation.

Mr. Athey said there are clearly members of the public, as I, concerned that their voices were not heard properly. You are saying that after 13 meetings everyone had their shot? Mr. Kavanaugh concurred.

Mr. Kavanaugh said in light of the fact of the 13 meetings and the fact HAC had considered this project and had their guidelines, the argument can be made and differences of opinion can be held regarding what the guidelines require and don't require, but ultimately he is reluctant to substitute his judgment for the HAC. On that basis he moved the appeal be denied. The Mayor asked Mr. Athey to preside over the meeting. Mr. Athey called the question. The Mayor seconded the motion, which passed with a 2-1 vote with Mr. Athey in opposition.

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Adjournment

The meeting was adjourned at 11:35 p.m.

Respectfully submitted,

Debbie Turner
Stenographer